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C O N F I D E N T I A L SECTION 01 OF 04 LAGOS 000009

SIPDIS

DEPT PASS TO EX-IM KENNETH VRANICH AND BERT C. UBAMADU
DEPT OF TREASURY PASS TO LKOHLER
USDOC FOR 3317/ITA/OA/KBURRESS
STATE PASS OPIC FOR ZHAN AND MSTUCKART
STATE PASS TDA FOR NCABOT
STATE PASS USTR FOR ASST USTR SLISER

E.O. 12958: DECL: 01/03/2015

TAGS: [EFIN](#) [ECON](#) [EIND](#) [KCOR](#) [EAID](#) [PGOV](#) [NI](#)

SUBJECT: LAND TENURE REFORM NEEDED FOR REAL ESTATE
DEVELOPMENT

Classified By: Consul General Brian L. Browne for reasons 1.4(b)
and (d).

[11.](#) (SBU) Summary. The Nigerian housing/real estate sector is cumbersome, costly, and has not been the catalyst for growth and private sector activity that it should be. Primary reasons for the inefficiency of this sector are that the laws and regulations governing conveyance and registration of title are antiquated and invite far too much government interference in what are essentially private transactions. Real estate experts state the 1978 Land Use Act (hereafter LUA), impedes development, inflates land prices, increases corruption, and promotes abuse by state governors using "public interest" provisions within the LUA as a cover to abridge the landed interests of political opponents. Without major reform in land tenure and conveyance laws and the mortgage industry, the construction and real estate sectors will continue to be throttled by high costs, the vagaries of politics, and will be unable to live up to their potential as economic drivers as they are in other economies. End Summary.

Background

[12.](#) (SBU) The 1978 LUA was enacted by and, in part, was the brainchild of then military Head of State Olusegun Obasanjo. In theory, the statist LUA was intended to make land easily available to all Nigerians while discouraging speculation. To accomplish this, LUA vested control of land in the state governments. Instead of stifling private profiteering as envisioned, however, it has opened the door to official corruption and the creation of additional layers of government interference in land transactions. Under the LUA, control and management of all land in the territory of each state was vested in the Governor of that state. No person is permitted to build or destroy any structure in an urban area without a prior certificate, a right of occupancy or signed license from the state. In practice, this means all conveyances and building projects have to be approved by a state governor or his authorized designee. Not only dilatory, this makes each transaction dependent on the goodwill of a highly politicized actor who is not in the habit of rendering favors to neutrals not within his camp let alone political opponents. The Governor also has authority to revoke a Certificate of Occupancy (hereafter COP) at any time for overriding "public interest" and, in the course of Nigerian jurisprudence, a state governor has ample latitude to define the public's interest and how it overrides that of the private landowner.

Governors' Abuse of Power, Bribery and Corruption

[13.](#) (C) Most real estate experts have concluded the LUA promotes corruption. Deputy Manager Mortgage Operations Uddy Egbe of Union Homes, the largest Primary Mortgage Institute in Nigeria, said state governors used the LUA to carry out political vendettas under the guise of the "public interest" provision found under the LUA. The LUA vested too much power in state governors and there is no "checks and balances" system to control gubernatorial caprice. A governor could at any time demolish a home or residence claiming "public interest", and individuals would be extremely limited in their ability to legally challenge such actions. CEO First Bank Nigeria Mortgages (FBN), Mohammed Santuraki, said state governors revoked land rights of opponents and awarded them to political allies on a daily basis.

[14.](#) (C) Union Homes Lekki Branch Manager, Ifeanyi Ozoh, added that corruption also occurred during the title transfer process. For example, if person X sells property to person Y for naira 10 million, naira five million lower than the market value of the property, person Y must pay title registration fees amounting to 30% of total value of property for naira 15 million instead of naira 10 million. In order to reduce registration fees, person Y often will bribe

government officials to assess the property at lower than market value, he said.

----- Cumbersome Property Laws and Procedures -----

15. (U) A person wishing to legally purchase land to build a home must go through a gauntlet of cumbersome procedures. First, the person must obtain a COP from the property owner, agree on the terms of sale, and then have the owner assign the land to the purchaser through a deed of assignment. In order to avoid the misfortune of purchasing a COP from someone who does not own the land in question, the buyer must consult the State Bureau of Lands to confirm the seller's COP is genuine, registered with the state, and not restricted by earlier encumbrances. With the deed of assignment and purchase receipt in hand, the new owner goes to the State Bureau of Lands to obtain a Governor's Consent to the transaction to legally transfer a title. This could take months and a fair amount of footwork accompanied by ample entreaties to recalcitrant bureaucrats. Once a Governor's Consent is obtained, a person can begin building if no other structure exists on the property.

16. (SBU) In practice, due to long delays obtaining a Governor's Consent, people start building before obtaining the Consent. In fact, most Nigerians eschew obtaining a Governor's Consent to the transaction because of the costs. Thus, many home builders have never perfected their interests in property. While they may be de facto landowners in the eyes of government and perhaps the courts, their legal status may not be much better than that of a monied squatter. Moreover, to obtain a mortgage loan, banks require borrowers to have either a COP or a Governor's Consent. Consequently, most home builders do not seek mortgage loans.

----- Weak Mortgage Facilities High Interest Rates -----

17. (SBU) Due to the inability to access mortgage loans, the average well-off person builds a home or purchases property through cash transactions. The person may rely on family and friends to borrow money to pay the seller in one lump sum or to complete a building in stages as funds become available. This results in costly rounds of mobilizing and demobilizing a contractor. Often, a home will take years to build and the home owner will end up with a different contractor than the one that started the project.

18. (SBU) While the GON has a National Housing Fund aimed at providing low-income housing, there are insufficient funds to meet demand. Under the Federal Ministry of Housing and Urban Development's (FMHUD) national house financing scheme, the mortgage interest rate is 6% for a period of up-to 25 years, with the minimum requirement that a person should make naira 3,000 (USD 23) per month and contribute 2.5% of monthly salary. Despite the low mortgage rate, most people do not participate because of strict qualification requirements, long delays, and overall distrust of government. Due to years of mismanagement, corruption, and the FMHUD's inability to force institutions and individuals to contribute to the Housing Fund, the entire national house financing scheme became a thing most Nigerians avoid, Santuraki complained.

19. (SBU) Egbe said "Nigeria does not have a fully developed mortgage facility" because "there is no mortgage culture" and "most people pay by cash" to purchase or build homes. High commercial mortgage interest rates, over 20%, also are an impediment. Ozoh said to afford a five-to-ten year mortgage a person would need an annual income of, at least, naira 2 million (USD 14,925), thus eliminating 90% of the population. Lack of available credit prevents the vast majority of people from building or purchasing homes.

110. (SBU) Deputy Managing Director of GTBank, Bolaji Lawal confirmed that interest rates for mortgages hovered around 20% and that their bank required 40% minimum equity down payment for mortgage loans. The bank discouraged people from applying for mortgage loans at GTBank and recommended they consult Primary Mortgage Institutes (PMI) like Union Homes instead. Kofo Majekodunmi, Deputy Managing Director of MBC International Bank, said most banks in Nigeria did not offer a mortgage facility and that even PMI's "only earn about 10% of revenue from their mortgage business." Union Homes Managing Director O. N. Chionuma concurred with Majekodunmi's assessment. He estimated only one percent of the population could meet their company's strict requirements for obtaining a mortgage loan. First Bank Nigeria Mortgages CEO, Mohammed Santuraki, said high interest rates and large down payment requirements ensured that cash transactions for homes would remain the "standard practice" for buying homes in Nigeria.

----- Title Registration and Transfer Fees Too High -----

11. (SBU) The high costs associated with title registration including fees and multiple delays, also handicaps this sector. Union Homes Legal Secretary, A.A. Daniel, said the fee for obtaining a Governor's Consent was 16% of the capital value of the property plus additional development levies such as capital gains tax, stamp duty, and registration fees that when combined amounted to 30% of the capital value of property. In addition, long delays, bureaucratic hassles, and inadequate record-keeping facilities hampered the registration process. Santuraki said he chose not to register his homes in Abuja and Lagos to avoid hassles and registration fees.

Rising Construction Costs

12. (U) On the supply side, increased costs for raw materials such as cement, led to a slow-down or halt in construction and caused housing prices to rise. The cost for cement between August 2004 to August 2005 rose by 16%, calculating for inflation, according to industry experts. Warehousing, transportation, and fuel cost increases also cut into the profit margins of construction companies and real estate developers.

13. (U) Frank Ugbodaga, CEO of Construction Management Company Ganttworks Nigeria, said costs for raw materials alone increased by 25% for his company since August 2004. His company imported raw materials from Italy, Brazil, and increasingly China because raw materials were unavailable locally or of poor quality. Most customers preferred imported products for tiles, bathroom sinks, and ceramic products because local production quality was substandard. Mansur Ahmed, Director General Nigerian Economic Summit Group (NESG) told us Nigeria has abundant cement and limestone, but that poor production capacity, management and infrastructure prevented full exploitation. Nigeria had four or five cement mills with eight to nine million-tons/per annum total production capacity, but that currently only five to six million-tons/per annum were produced, he said.

Rising Infrastructure Costs

14. (U) Inadequate infrastructure raised purchasing prices for property. Diya Fatimilehin Estate Surveyors Founder, Gboyega Fatimilehin, said the cost of building and maintaining power supply, adequate roads, providing water distribution systems, and routine maintenance work, easily costs their company over naira 250 million (USD 1.87 million) per year. These costs were pushed onto consumers, raising the purchasing price for homes. Ganttworks Nigeria CEO Ugbodaga said infrastructure costs increased for their company by 15% since 2004. Ganttworks aimed to build estates in areas where "sufficient infrastructure was already in place" to reduce infrastructure costs. Nevertheless, even in areas with relatively good roads and power supply, infrastructure costs remained a "headache".

Security Costs

15. (U) Diya Fatimilehin Estate Surveyors Co-Partner, Kolawole Diya, said security costs associated with protecting property hampered real estate development. The fear of armed robbery and violence not only increased security costs, but prevented foreign investment from flowing into real estate. "People are afraid for their safety" and until security issues were addressed, Diya believed real estate development would suffer. Many builders were wary of beginning development projects in areas occupied by low-income households because the security costs made such projects too risky.

Comment

16. (SBU) The 1978 Land Use Act has had unintended negative consequences on the housing, real estate, and mortgage sectors. It has stymied real estate development, exacerbated corruption, and has complicated and clouded the manner in which an individual can purchase, perfect and convey private property rights. It has led to artificial scarcity and escalated land prices. The LUA vests too much power in state governors, who often abuse this authority. This power to control land perhaps is the single greatest impediment to the protection of property rights and ownership. The onerous process and exorbitant fees associated with obtaining a Certificate of Occupancy or Governor's Consent have stopped an immeasurable amount of economic activity over the years.

17. (SBU) Comment continued: Although the media, the National Assembly (NA), and even President Obasanjo have talked about amending the LUA, it is unlikely to occur any time soon. Politicians and office holders will be increasingly preoccupied with the 2007 election and less inclined to venture into the nettle of land reform. Many governors and politicians benefit from the current system. It will take a strong effort to change this legal superstructure. Until then, the Nigerian real estate/housing sector will remain straitjacketed. End Comment.
BROWNE